

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MELISSA BARFIELD,

Plaintiff,

v.

SHERIFF OF LANCASTER COUNTY,

Defendant.

CASE NO. 8:09CV121

**MEMORANDUM
AND ORDER**

Plaintiff filed her Complaint in this matter on April 6, 2009. (Filing No. [1](#).) Plaintiff previously has been given leave to proceed in forma pauperis. (Filing No. [5](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed her Complaint on April 6, 2009, against the Lancaster County Sheriff. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is a nonprisoner that currently resides in Omaha, Nebraska. (*Id.* at CM/ECF pp. 5.) Condensed and summarized, Plaintiff alleges that her minor son is being discriminated against and wrongfully held for gun possession and robbery. (*Id.* at CM/ECF p. 1.) She asks the court to issue a Writ of Habeas Corpus to free him. (*Id.* at CM/ECF p. 4.)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis complaints to determine whether summary dismissal is appropriate. See [28 U.S.C. § 1915\(e\)\(2\)](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#).

Therefore, where pro se plaintiffs do not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [*Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 \(2007\)](#) (overruling [*Conley v. Gibson*, 355 U.S. 41 \(1967\)](#), and setting new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [*Martin v. Sargent*, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [*Burke v. North Dakota Dep’t of Corr. & Rehab.*, 294 F.3d 1043, 1043-1044 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

Plaintiff, as a non-attorney, may not bring an action on behalf of her son, whether or not he is a minor. See [*Navin v. Parkridge Sch. Dist.* 64, 270 F.3d 1147, 1149 \(7th Cir. 2001\)](#) (holding that non-lawyer parent had no right to represent minor child); see also [*Meyers v. Loudoun County Pub. Sch.*, 418 F.3d 395, 401 \(4th Cir. 2005\)](#). Accordingly, Plaintiff’s Complaint must be dismissed for lack of standing.¹

¹Even if Plaintiff’s son had filed this Complaint on his own behalf, he would need to amend it to properly allege a habeas claim. Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [*Preiser v. Rodriguez*, 411 U.S. 475 \(1973\)](#) and [*Heck v. Humphrey*, 512 U.S. 477 \(1994\)](#), if success on the merits of a civil rights claim would necessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [*Heck*, 512 U.S. at 486-87](#). Here, Plaintiff alleges that her son is being discriminated against and wrongfully held for gun possession and robbery and asks the court to issue a Writ of Habeas Corpus to free

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (Filing No. [1](#)) is dismissed without prejudice for lack of standing; and
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 27th day of May, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

him. (Filing No. [1](#) at CM/ECF pp. 1-4.) As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#).